

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT E. HINE,
Petitioner,

No. 1:09-cv-819

-v-

HONORABLE PAUL L. MALONEY

BLAINE C. LAFLE, JR.,
Respondent.

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

Petitioner Hine filed a motion for a certificate of appealability. (Dkt. No. 16.) On August 5, 2010, this court issued an opinion and order adopting a report and recommendation, dismissing the petition for writ of habeas corpus, and denying a certificate of appealability. (Dkt. No. 11.)

The court has already considered and addressed the issues raised in this motion. Contrary to Petitioner's assertion, the court did not issue a blanket denial of a certificate of appealability. The court separately considered and specifically addressed each of the claims raised in the portion of the order denying the certificate of appealability. *See Castro v. United States*, 310 F.3d 900, 903 (6th Cir. 2002) (per curiam). Petitioner acknowledges that attorney miscalculations of time to file petitions are not a basis for granting equitable tolling. *See Lawrence v. Florida*, 549 U.S. 327, 336 (2007). As was explained in this court's order dismissing the petition, appellate counsel miscalculated the time to file Petitioner's collateral attack in state court in order to toll the statute of limitation on Petitioner's federal claim. That miscalculation occurred in 2004. Petitioner's discussion of appellate counsel's subsequent actions in 2006 through 2009 do not justify the equitable tolling of a statute of limitation that already expired.

Accordingly, Petitioner's motion for a certificate of appealability (Dkt. No. 16) is **DENIED**.

IT IS SO ORDERED.

Date: September 3, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief, United States District Judge